

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6829 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
Points Nos.1 to 5 - No.
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MS DHARODIA

Versus

RAJKOT DISTRICT PANCHAYAT

Appearance:

MR IS SUPEHIA for Petitioner

MR NIGAM R SHUKLA for Respondent No. 1

SERVED for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 22/04/97

ORAL JUDGEMENT

This petition, essentially one under Article 227 of the Constitution, has been preferred by the petitioner against order of imposition of punishment made on 7th October, 1994 and confirmed in appeal by the appellate

authority on 16-3-95 and by the Gujarat Civil Services Tribunal on 30th May 1996.

The petitioner who was serving under the respondent No.1 Paychayat (hereinafter referred to as "the Panchayat") was found to have entered into a partnership with his brothers and to have started a business of brick kiln on a piece of land bought by the said brothers from the Government. Upon a disciplinary proceeding held against the petitioner, it is proved that the petitioner had without disclosing the fact of his being employed in the Panchayat bought a piece of land from the Government. The petitioner started the business of brick kiln on the said plot of land in the name and style of Messrs. Prakash Potteries and borrowed a loan of Rs.2,35,254/-from the Gujarat State Financial Corporation without informing the said Corporation about his employment under the Panchayat. Said loan was borrowed by making a representation to the Finance Corporation to the effect that the petitioner was engaged in the business. Said partnership firm failed to repay the amount of loan which was borrowed from the Finance Corporation and as a result, the Corporation had to initiate coercive proceedings for recovery of the loan amount. The petitioner did not disclose the factum of his acquisition of this immovable property or his having entered into partnership business to his employer, the Panchayat either. He misled the Panchayat by informing the Panchayat that he acquired immovable property along with his brothers by inheritance from his mother. Petitioner was thus found to have acted in contravention of rules 13, 14 and 16 of the Gujarat Panchayat Service (Conduct) Rules, 1964 (hereinafter referred to as the "Conduct Rules"). In view of the finding of guilt recorded by the inquiry officer and accepted by the disciplinary authority, the Panchayat on 1st January, 1994 issued a notice to the petitioner to show cause why punishment of dismissal from service shall not be imposed upon him under rule 5 of the Gujarat Panchayat Service (Discipline and Appeal) Rules, 1964 (hereinafter referred to as "the Appeal Rules"). The petitioner submitted his reply and the additional reply to the said show cause notice. The Panchayat considering the records of the disciplinary proceedings and the replies submitted by the petitioner held that the petitioner had acted in contravention of the Conduct Rules as aforesaid and imposed a penalty of dismissal from service. The said order of dismissal from service has been confirmed by the appellate authority under its order dated 16-3-95 and by Gujarat Civil Services Tribunal under its order dated 30th May, 1996. Learned Advocate Mr.Supehia has appeared

for the petitioner and has raised five contentions:

He has submitted that -

(a) the conduct of the petitioner in carrying on his business has no relation whatever with discharge of his duties as a Panchayat servant. Further, the petitioner had entered into the partnership in the year 1977 for which the disciplinary action could not have been initiated in the year 1991 as has been done in the present case;

(b) even if it is held that the petitioner has acted in contravention of the Conduct Rules, the alleged misconduct committed by the petitioner is not such which should entail punishment of dismissal from service particularly in view of 29 years' long unblemished service rendered by the petitioner;

(c) the disciplinary authority has failed to apply its mind whether any lesser penalty could have been imposed upon the petitioner in view of the guilt established against him;

(d) the disciplinary authority has failed to consider the representation submitted by the petitioner on 7th October, 1994 and thus the order made against the petitioner is vitiated being contrary to rule 7(12) of the Appeal Rules;

(e) the order of punishment is based on the advice of the Gujarat Panchayat Service Selection Board which has relied upon the extraneous material which did not make part of the disciplinary proceedings.

Rule 13 of the Conduct Rules provides, inter alia, that no Panchayat servant shall except with the previous sanction of the Panchayat engage directly or indirectly in any trade or business.

Rule 14 provides, inter alia, that no Panchayat servant shall, save in the ordinary course of business of a Bank, or a firm of standing, borrow money from, or otherwise place himself under pecuniary obligation to any in person within the local limits of his authority or any other person with whom he is likely to have official dealings.

Rule 16 of the conduct rules provides, inter alia, that a member of the Panchayat service shall not, except with the previous permission of the District

Panchayat acquire any immovable property by mortgage, purchase, sell or gift in his own or in the name of member of his family.

Upon perusal of the report of the inquiry officer, it is evident that the petitioner has acted in contravention of the above-referred rules. It, therefore, cannot be gainsaid that the petitioner has committed misconduct which should call for a disciplinary action. Even if the petitioner's dealings have no connection whatever with the discharge of his duties, still the petitioner would be liable for disciplinary action. In the matter of S.Govinda Menon vs. Union of India & Another (AIR 1967 S.C.1274) the Hon'ble Supreme Court has held:

"It is, therefore, open to the Government to take disciplinary proceedings against the appellant in respect of his acts or omissions which cast a reflection upon his reputation for integrity or good faith or devotion to duty as a member of the service. In our opinion, it is not necessary that a member of the Service should have committed the alleged act or omission in the course of discharge of his duties as a servant of the Government in order that it may form the subject matter of disciplinary proceedings. In other words, if the act or omission is such as to reflect on the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that act or omission even though the act or omission relates to an activity in regard to which there is no actual master and servant relationship....."

In my view, therefore, for the petitioner's acts of commission and omission which are proved to be contrary to the Conduct Rules, disciplinary action against the petitioner is maintainable.

The petitioner's contention that the petitioner's representation made on 10-1-94 has not been taken into consideration by the disciplinary authority also cannot

be believed. On perusal of the order of disciplinary authority, it is evident that both the replies filed by the petitioner on 7-1-94 and 10-1-94 are taken into consideration by the disciplinary authority. The petitioner's contention that the impugned order has been made in contravention of the Rule 7(12) of Appeal Rules is, therefore, required to be rejected.

Learned Advocate Mr.Supehia has relied upon the judgment of this court in the matter of H.P.Thakore vs. State of Gujarat & Ors. (20 GLR 109) and has submitted that the disciplinary authority has not taken into consideration several factors enumerated in the said judgment before imposing punishment of dismissal from service. The order of punishment, therefore, requires to be quashed and set aside. Mr.Supehia has also relied upon the judgment of the Supreme Court in the matter of B.C.Chaturvedi v. Union of India and Ors. (JT. 1995(8) SC.65).

In the above matter of B.C.Chaturvedi(supra)) the Supreme Court has held that:

"the High Court/Tribunal while exercising the power of judicial review cannot normally substitute its own conclusion of penalty and impose some other penalty unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal."

In the matter of H.P.Thakore(supra) this court in Paragraph-3 of the judgment has held that it is not expedient in the interest of the administration to visit every employee against whom a fault is established with the penalty of dismissal and to get rid of him. In Paragraph-5 of the judgment, the court has held that :

"the disciplinary authority per force is required to consult himself for selecting the most appropriate penalty from out of the range of penalties available that can be imposed having regard to the nature, content and gravity of the default".

Learned Advocate Mr.Shukla appearing for the Panchayat has relied upon the judgment of the Supreme Court in the matter of State Bank of India & Ors. v.

The court has held that:

" in the matter of imposition of punishment or penalty which can be lawfully imposed on the proved misconduct of the employee, the Tribunal or the High Court has no power to substitute its own discretion for that of the disciplinary authority. The High Court or the Tribunal has no jurisdiction to impose any punishment to meet the ends of justice."

Considering the principles laid down in the aforesaid three judgments the order of punishment made by the disciplinary authority is required to be upheld. Having regard to the gravity of the misconduct committed by the petitioner the punishment of dismissal from service cannot be said to be too harsh or not commensurate with the gravity of the guilt established against the petitioner. The petitioner has acquired a piece of land from the Government by making a misrepresentation, has carried on the business without informing or prior sanction of the Panchayat, has borrowed loan from the Finance Corporation without disclosing the factum of his being a Panchayat employee and has slurred the image of the Panchayat by not repaying the loan borrowed by the partnership firm in which he is a partner, has misled the Panchayat by making a false representation that the piece of land was inherited by him from his mother. I am, therefore, of the view that the order of punishment dismissing the petitioner from service does not call for any interference.

The contention raised by Mr.Supehia that the Gujarat Panchayat Services Selection Board has relied upon extraneous material which did not make part of the disciplinary proceedings also requires to be rejected. I have called for the copies of the correspondence referred to in the impugned order dated 7th October, 1994. The record of the disciplinary proceedings was sent to the Gujarat Panchayat Service Selection Board for its advice. The said Board under its communication dated 2nd June, 1994 had inquired of the Panchayat whether the petitioner had obtained prior permission before entering into the partnership and commencing business in the name and style of M/s.Prakash Potteries. The said inquiry was duly answered by the Panchayat under its communication dated 5th August, 1994. Thus, it is evident that no extraneous

material has been relied upon either by the disciplinary authority or by the Gujarat Panchayat Service Selection Board while considering the quantum of punishment required to be imposed upon the petitioner.

No other contention has been raised by Mr.Supehia.

In view of the above discussion, petition is dismissed. Rule is discharged. Petitioner shall bear costs of this petition.
